

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**MAY 19 2003**

**PATRICK FISHER**  
Clerk

MILTON LEE,

Plaintiff - Appellant,  
vs.

KEITH HENRY, Judge, Junction City,  
Kansas; WAYNE LOSSMAN, Chief  
Jailer, Junction City, Kansas of Geary  
County Jail,

Defendants - Appellees.

No. 03-3039  
(D.C. No. 02-CV-3411-GTV)  
(D. Kan.)

**ORDER AND JUDGMENT\***

Before **KELLY, BRISCOE**, and **LUCERO**, Circuit Judges.\*\*

Mr. Lee, appearing pro se and in forma pauperis, appeals from the district court's dismissal without prejudice of his civil rights action against Defendant Wayne Lossman. He does not contest the dismissal with prejudice of Defendant Judge Henry based upon absolute judicial immunity. Mr. Lee contends that his

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

suit for damages against the county jailer is not barred by Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), as the district court so held.

According to the complaint, Mr. Lee was sentenced to serve 30 days consecutive to any county sentence. He alleges that there was no county sentence, yet he was required to serve extra time from July 27, 2001 to August 15, 2001. He faults the judge for illegally ordering a consecutive sentence and the jailer for carrying it out. R. Doc. 1 at 3, 5. This action is premature under Heck because it would imply the invalidity of the sentence pronounced by the state judge and executed by the county jailer. 512 U.S. at 486-87. Thus, we affirm for substantially the same reasons relied upon by the district court.

AFFIRMED. Mr. Lee is reminded that he must make partial payments until the entire balance of the appellate filing fee is paid.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge